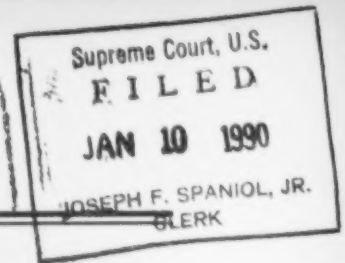


(3)  
No. 89-690



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1989

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LEO HURWITZ,

*Petitioner,*

vs.

THE UNITED STATES OF AMERICA and  
THE CENTRAL INTELLIGENCE AGENCY,

*Respondents.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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**REPLY BRIEF FOR PETITIONER**

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ARGUMENT

I.

RULE 17 CONSIDERATIONS WARRANT  
REVIEW BY THIS COURT

This case deserves consideration by this Court under Rule 17. There are special and important reasons. Until this Court decides this question of the opening of first-class mail in the State of New York and elsewhere such mail may be opened with impunity by any government agency or other and the dissemination of its contents.

II.

ISSUE OF NATIONAL IMPORTANCE  
IS RAISED

Respondents assert in its argument that certiorari should be denied because the decision of the Court of Appeals "... raises no issue of national importance." (p. 4) This pronouncement reduces the right of privacy of one's

first-class mail to a nullity. This is a complete denial of the Fourth Amendment, the Penal Law of the State of New York and the opening of mail.

III.

RESPONDENTS' ARGUMENT WOULD  
NULLIFY STATUTES OF THE STATE  
OF NEW YORK, OF THE UNITED  
STATES CODE, ARTICLE 1, §12  
OF THE CONSTITUTION OF THE  
STATE OF NEW YORK AND THE  
FOURTH AMENDMENT TO THE UNITED  
STATES CONSTITUTION

The argument of the respondents would nullify (A 21-25):

1. 39 Penal Law 250.00 of the State of New York.
2. 39 Penal Law 250.25 of the State of New York.
3. 39 U.S.C.A. 4057.
4. Fourth Amendment to the U.S. Constitution.
5. Article 1, §12 of the Constitution of the State of New York.
6. 42 U.S.C.A. 1983.



IV.

THE PRIVACY OF FIRST-CLASS  
MAIL IS INVIOABLE AND PRO-  
TECTED BY THE PENAL STATUTE  
OF THE STATE OF NEW YORK

The Court of Appeals and the respondents rely heavily upon Roberson v. Rochester Folding Box Co., 171 N.Y. 538. This reliance is not only weak, but absolutely misses the statutory right of privacy as regards first-class mail. The privacy of mail is so inviolable that penal statutes have been enacted in New York to protect it from invasion.

The fact that the Penal Law of the State of New York and its Constitution impose penalties for the opening of first-class mail and restrictions on unlawful search and seizure are evident enough that the right of privacy insofar as first-class mail is concerned has a high priority.

The case is a challenge to the respondents' total disregard and avoidance of the constitutional right of an individual not to have his privacy invaded.

The respondents deprecate 34 Hillside Realty Corp. v. Norton, 198 Misc. 302, 101 N.Y.S. 2d 437 (1950) cited by petitioner as not a case of privacy. This case held that an action for damages, as in this case, follows when the conduct is criminally punishable. Interestingly, the respondents fail to come forward with any case where this Court has been asked to decide upon the non-right of the privacy of the mail. The only recourse to privacy in New York State, as argued by the respondents, is "picture taking" without consent.

V.

THE CASE IS NOT BARRED BY  
THE STATUTE OF LIMITATIONS

Insofar as the statute of limitations is concerned and which the respondents and the District Court, Judge Weinstein, relied is misplaced. Although this is not an issue in this petition for a writ of certiorari, since the lower court disregarded this and affirmed the order for summary judgment on jurisdictional grounds, it should nevertheless be noted. In the respondent's Brief in the Court of Appeals the public disclosure of the wrongdoing of the CIA in The New York Times of December 22, 1974, is relied upon. (Footnote p. 30.) Petitioner's Reply Brief documents this "disclosure" by appending a copy of that issue of The New York Times. In that news item of 9 columns citing the illegal acts of

the CIA of approximately 8550 words only 6 words mention the surveillance of mail. Upon this quicksand of reasoning the respondents contend that the statute of limitations has run against petitioner.

A further inference can be drawn from the respondents' contention and that is that one should not trust our government agencies. From this every citizen every day should be able to examine any files of information gathered about himself or herself in order not to have an action barred by the statute of limitations. In this case petitioner had no reason to suspect that an innocuous letter mailed to a colleague temporarily in the Soviet Union would be opened, read and circulated by an agency of our government in a "place" owned and operated by the

government and staffed by government employees.

VI.

MONETARY RELIEF CAN FOLLOW THE  
VIOLATION OF A PENAL STATUTE

The argument of the respondents that Section 250.25 of the New York Penal Code (McKinney 1989) was not raised in or addressed by the Court of Appeals is not entirely accurate. The complaint distinctly refers to this section of the New York Penal Law (A-5). With respect to the learned judges below whether the law of New York confers a cause of action to right the wrongs complained of in this case, it does. A cause of action for monetary relief can follow the violation of a penal statute of the State of New York, 34 Hillside Realty Corp., et al v. Norton, 101 N.Y.S. 2d 437.

CONCLUSION

For all of the foregoing reasons and those set forth in the Petition For A Writ of Certiorari, petitioner respectfully submits that his petition be ~~granted~~.

Respectfully submitted,

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